

## **Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012**

F2012L02434

Portfolio: Attorney-General

PJCHR comments: [Report 1/13](#), tabled on 6 February 2013

Ministerial response dated: 6 February 2013 (received 1 March 2013)

### **Summary of committee view**

3.1 The committee thanks the Minister for his detailed response. The committee has decided to defer its consideration of this matter until a future report.

### **Background**

3.2 This instrument applies the *Extradition Act 1988* to all countries who are party to the International Convention for the Suppression of Acts of Nuclear Terrorism (ICSNT). It does so by ensuring that the definition of an 'extradition country' in the Extradition Act is taken as including a country for which the ICSNT is in force.

3.3 The statement of compatibility stated that the instrument 'does not engage any of the applicable rights or freedoms' and that the existing extradition regime 'contains a number of human rights safeguards that appropriately balance Australia's need to comply with our international obligations while ensuring that the rights of individuals are protected'.

3.4 The committee was of the view that it was not clear from the statement of compatibility how the existing extradition arrangements are considered to be compatible with human rights. The committee said that in order for it to be satisfied that the instrument is compatible with human rights it is necessary to understand how the *Extradition Act 1988* complies with human rights.

3.5 The Minister's response sets out information on the human rights protections contained in Australia's extradition regime.

1.2 The Minister's response is attached.

### **Committee's response**

3.6 In a future report the committee will be considering instruments registered from 16 February 2013, which will include consideration of the Extradition (Cybercrime) Regulation 2013 [F2013L00214] registered on 18 February 2013.

3.7 As the issues in this instrument are substantially the same as the Extradition (Cybercrime) Regulation 2013 the committee has decided to defer its consideration of this matter until a future report.



**Attorney-General  
Minister For Emergency Management**

MC13/01837

Mr Harry Jenkins MP  
Chair  
Parliamentary Joint Committee on Human Rights  
Parliament House  
CANBERRA ACT 2600

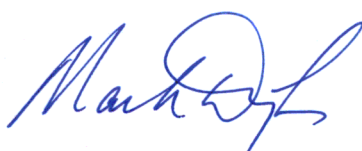
Dear Mr <sup>Harry</sup>Jenkins

Thank you for your letter regarding the *Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012* ('the Regulation') in which you refer to the first report of 2013 for the Parliamentary Joint Committee on Human Rights ('the Committee'). In the report the Committee seeks further information on the human rights compatibility of the *Extradition Act 1988* ('the Extradition Act') in order to make a determination as to the compatibility of the Regulation with human rights.

I am pleased to provide you with further information on the human rights protections contained in Australia's extradition regime. I enclose with this letter an overview of Australia's extradition system and the human rights protections contained in the Extradition Act. I am satisfied that the Regulation is compatible with human rights and does not alter any of the human rights protections contained within the Extradition Act.

I trust the enclosed information is of assistance and will aid the Committee in its consideration of the Regulation. The action officer for this matter is Claire Cocker who can be contacted on 02 6141 3732.

Yours sincerely

  
**MARK DREYFUS QC MP**

26/2/13  
Encl: Information on the human rights protections in Australia's extradition system

## Human rights protections in Australia's extradition system

Extradition is a key international crime cooperation tool. It is the process by which one country sends a person to another country to face criminal charges or serve a sentence. The Extradition Act provides the legislative basis for extradition in Australia.

As stated in the letter from the Parliamentary Joint Committee on Human Rights, extradition can engage a range of human rights, including the right to a fair hearing, the right to liberty, the right to life and the prohibition on torture and cruel, inhuman or degrading treatment or punishment and rights to equality and non-discrimination.

Australia's extradition regime contains a number of human rights safeguards that appropriately balance Australia's need to comply with our international criminal justice obligations whilst ensuring that the human rights of individuals are protected. These safeguards and protections are contained in relevant extradition treaties and Australia's *Extradition Act 1988* ('Extradition Act') and will apply to extradition requests made under the *Convention for the Suppression of Acts of Nuclear Terrorism* ('the Convention').

The extradition process in Australia contains three stages, firstly there is a discretion, under section 16 of the Extradition Act, to accept an extradition request. For an extradition request to be accepted, the person must be an extraditable person in relation to the extradition country. To be an extraditable person, the country seeking the extradition must have a warrant in force for the arrest of the person, the relevant offence must be an extradition offence and the person must be outside of the country making the extradition request.

The second step in the process is for a magistrate to determine whether the person is eligible for surrender under section 19 of the Extradition Act. A person is only eligible for surrender if:

- the necessary documents are produced
- any additional requirements imposed by regulations are met
- the conduct amounts to an offence in both countries, and
- the magistrate is satisfied there are no substantial grounds for believing there is an extradition objection.

An extradition objection includes the following (section 7 of the Extradition Act):

- where the extradition offence is a political offence
- where the person is actually sought for the purpose of prosecuting or punishing the person on account of his or her race, sex, sexual orientation, religion, nationality or political opinions
- where the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his or her race, sex, sexual orientation, religion, nationality or political opinions
- where the offence for which the person is sought is a military offence, but not a criminal offence, and
- where the person will be subject to double jeopardy (that is, a person will be tried twice for the same (or similar) charges following a legitimate conviction or acquittal).

Where a person is found eligible for surrender by the magistrate, the third step in the process is for a determination to be made regarding whether the person should be surrendered under section 22 of the Extradition Act. The Extradition Act provides that when making a surrender determination, a person must not be surrendered where (subsection 22(3)):



- there is an extradition objection in relation to the relevant offence
- there are substantial grounds for believing that he or she would be in danger of being subjected to torture
- there are substantial grounds for believing that he or she would be in danger of being subjected to the death penalty, or
- where the requesting country has not given an assurance that the person sought will only be tried for the offences contained in the extradition request.

There is also a broad discretion under section 22 of the Extradition Act to refuse surrender. This discretion provides an additional mechanism to refuse extradition in circumstances where there are legitimate human rights concerns. The person subject to extradition also has the opportunity to make representations regarding any human rights concerns. In considering whether a person should be surrendered, those matters raised by the person the subject of the extradition request will be considered.

In circumstances where a person believes that human rights concerns were not adequately considered in the extradition process, they may seek review under the Extradition Act or under section 39B of the *Judiciary Act 1903* and section 75(v) of the Constitution of Australia.

The Extradition Act makes bail available, where there are special circumstances, to persons who have consented to extradition, have been determined eligible for surrender by a magistrate or are seeking review of the decision to surrender the person. This ensures that where circumstances justifying bail exist, the person will not be kept in prison during the extradition process.

#### *The Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012*

The *Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012* ('the Regulation') will give effect in Australian domestic law to Australia's extradition obligations under the Convention. Under the Extradition Act, Australia can only accept extradition requests from countries that have been declared by regulation to be 'extradition countries' for the purpose of the Extradition Act. The Regulation will apply the Extradition Act to States Parties to the Convention by declaring that each State Party is an 'extradition country' for the purposes of the Extradition Act.

The effect of the Regulation is to allow Australia to make and receive extradition requests to and from States Parties to the Convention, for offences specified in the Convention. The offences described in the Convention relate to nuclear terrorism and are therefore of a serious nature and of international concern. As a State Party to the Convention, Australia has an obligation to facilitate international crime cooperation, including the extradition of persons who are wanted to face prosecution or serve a sentence in the jurisdiction of another State Party to the Agreement.

The Regulation does not alter any of the human rights safeguards that are already contained in the Extradition Act, as outlined above.